IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 31285 of 2007(Y)

PETITIONER:

P.SUBASH CHANDRAN,
S/O PUNDARIKASHAN, PROPRIETOR,
M/S NOBLE CONSTRUCTIONS, 'SREENIVAS',
VENJARAMOODU, THIRUVANANTHAPURAM.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.K.R.KRISHNA KUMAR
SRI.NELSON JOSEPH

RESPONDENTS:
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1. **UNION BANK OF INDIA,**
   CENTRAL OFFICE: 239, VIDHAN BHAVAN MARG,
   NARIMAN POINT, MUMBAI-400 021.

2. **THE AUTHORIZED OFFICER,**
   UNION BANK OFFICE, REGIONAL OFFICE,
   UNION BANK BHAVAN, P.B.NO. 307,
   M.G.ROAD, STATUE, THIRUVANANTHAPURAM- 695 001.

BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

WP(C) No. 31285 of 2007

Dated, this the 24th day of October, 2007

J U D G M E N T

The petitioner had two transactions with the respondent Bank. One was in relation to an overdraft facility for Rs. 25 lakhs and the other was in relation to a bank guarantee granted to him. In respect of the overdraft facility, he had mortgaged certain immovable properties and for the bank guarantee, he had given margin money by way of fixed deposit receipts of Rs. 3.75 lakhs. When he committed default in repayment towards his dues of the overdraft facility, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and issued Ext.P1 notice under Section 13(2) of the said Act. This includes the dues towards the overdraft facility and also the bank guarantee. Ext.P1 was challenged by the petitioner in WP(C) No. 20357/07 and the said writ petition was disposed of vide Ext.P2 judgment with the following directions :-

> "However, the learned Standing Counsel for the bank submits that the amount covered by the bank guarantee would be excluded subject to the right of the bank to insist on other security of the security of the fixed deposit itself for the bank

> guarantee. Learned counsel for the Petitioner submits that the amount covered by the credit facility would be paid off within a month. Accordingly, this writ petition is disposed of recording the above submissions of both parties and directing the Petitioner to pay off the amount covered by the credit facility within one month from today. In the meanwhile the respondents shall issue a statement of accounts to the petitioner and the Petitioner shall pay the amount as directed above as per the statement of accounts to be furnished by the respondents without prejudice to the right of the petitioner to challenge the correctness of the same in appropriate proceedings. If the petitioner does not pay the amount, it would be open to the respondents to proceed further with Ext.P1 in respect of the amounts covered by the credit facility without having to issue any fresh notice or proceedings in that regard."

2. The petitioner did not pay the amount towards the overdraft facility as directed in the judgment. However, he now requests that the property mortgaged by him towards overdraft facility be treated as security for the bank guarantee also and the margin money for bank guarantee be adjusted towards his dues in the overdraft facility. It is also submitted that he may be permitted to pay the balance amount of the dues after adjustment as above.

3. In my view, the request now made by the petitioner cannot be considered. As is evident from the Ext.P2 judgment, this

Court had directed that within a period of one month from the date of the judgment, the balance dues towards the overdraft facility shall be paid by the petitioner. It was also directed that if the petitioner does not pay the amount, it will be open to the respondents to proceed with Ext.P1 notice in respect of petitioner's dues. It is an admitted fact that the petitioner did not pay the dues as directed in Ext.P2 judgment and it was therefore that the respondents have issued Ext.P4 notice informing the petitioner that further action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act will be taken. This cannot be faulted in view of the undisputed failure of the petitioner to comply with the directions in Ext.P2 judgemnt.

4. In so far as the present request for more time to pay the amount is concerned, in my view, that also cannot be considered in this proceedings. If the petitioner wants enlargement of time fixed in Ext.P2 judgment, an application ought to have been made in that case instead of filing a fresh writ petition.

5. For these reasons, I am not in a position to consider the request of the petitioner . This writ petition fails and is accordingly

dismissed.

6. However, I clarify that I am not pronouncing on the correctness or otherwise on the dispute raised by the petitioner regarding calculation of the interest in the statement of accounts furnished by the Bank.

(ANTONY DOMINIC, JUDGE)

jg